

ROBERT J. MAHY ET AL.

IBLA 82-1179

Decided October 8, 1982

Appeal from decision of California State Office, Bureau of Land Management declaring unpatented mining claims abandoned and void. CA MC 667, CA MC 1783, CA MC 6292, CA MC 6293.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein constitutes conclusive abandonment of the mining claim by the owners.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

For mining claims located after Oct. 21, 1976, copies of notices of location must be recorded with BLM within 90 days after

the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

APPEARANCES: Robert J. Mahy, James E. Farris, John Stamper, and Russell Short, pro sese.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Robert J. Mahy, James E. Farris, John Stamper, and Russell Short from the July 13, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Golden Crest Nos. 1 and 2 placer mining claims, and the Golden Faith Nos. 1 and 2 placer mining claims, CA MC 667, CA MC 1783, CA MC 6292, and CA MC 6293, respectively, abandoned and void because no proof of labor or notice of intent to hold the claims was filed with BLM in 1981 as required by 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellants assert that John Stamper visited the BLM office on August 3, 1981, with the intention of filing new location notices for the four claims to clear their title because of litigation involving the original claims. The notices of location had been recorded in Yuba County, California, May 21, 1981. The counter clerk in BLM apparently misunderstood the request and allegedly advised Stamper that if the same claim names were retained, the claims would have to retain the same CA MC identification numbers. In any event, Stamper did not file the new location notices nor pay the required service fees of \$ 5 per claim. The BLM clerk is also alleged to have told Stamper that the four claims were in good standing and that the next assessment work recordation had to be filed prior to December 31, 1982.

[1] Section 314(a) of FLPMA requires the owner of an unpatented mining claim to file evidence of assessment work performed on the claim or a notice of intention to hold the claim with BLM on or before December 30 of each calendar year. Failure to do so within the prescribed time limit is statutorily considered conclusively to constitute an abandonment of the claim pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). A filing only with the county recorder does not satisfy this requirement.

When appellants failed to file timely with BLM in 1981 either an affidavit of assessment work or a notice of intention to hold the claims, BLM properly held the claims abandoned and void. Robert E. Eisenman, 50 IBLA 145 (1980).

[2] The fact that one of the appellants may have been misinformed of the recordation requirements of FLPMA, while unfortunate, does not excuse them from compliance. Reliance upon misinformation by an employee of BLM cannot operate to vest any interest not authorized by law. 43 CFR 1810.3(c). Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto. 44 U.S.C. §§ 1507, 1510; Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellants. This Board has no authority to excuse lack of compliance with the requirements of FLPMA. Lynn Keith, *supra*; A. J. Grady, 48 IBLA 218 (1980).

[3] For mining claims located after October 21, 1976, copies of the location notices must be recorded with BLM within 90 days after location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee of \$ 5 per claim, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after October 21, 1976, the claim must be deemed abandoned and void. Michael G. Commons, 52 IBLA 396 (1981); Philip A. Griner, 52 IBLA 179 (1981). So in this case where appellants did not tender both copies of the location notices and the required service fee timely, there could be no new recordation of the claims in compliance with FLPMA.

Accomplishment of a proper recording in the appropriate county does not relieve the claimants from recording with BLM under the filing requirements of FLPMA or the implementing regulations. While under 43 CFR 3833.4(b) a defective or untimely recording under state law does not, of itself, constitute a failure to file under FLPMA, neither does a valid or timely filing with a county constitute a valid FLPMA filing. There are two separate filing requirements, and compliance with the one does not constitute compliance with the other.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

